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March 8, 2024

**VIA ECF**

Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *In re Customs and Tax Administration of the Kingdom of Denmark  
(Skatteforvaltningen) Tax Refund Scheme Litigation, 18-md-2865 (LAK)*

Pursuant to Pretrial Order No. 34, counsel for plaintiff Skatteforvaltningen and for defendants Richard Markowitz, Jocelyn Markowitz, John van Merkensteijn, Elizabeth van Merkensteijn, Robert Klugman and Michael Ben-Jacob jointly submit the attached proposed schedule for pretrial proceedings. The parties have agreed that for certain pretrial matters, the schedule need not be contingent on the ultimate trial date and have provided specific dates for those matters regardless of the actual trial date. The parties have further agreed that the schedule for the remaining pretrial matters are contingent upon the ultimate trial date, and have therefore provided a timeline reflecting the number of days prior to the start of trial each item is due to be exchanged or filed. Because the parties have agreed on the framework for a pretrial schedule, the parties expect that after the Court determines the trial date, the parties will be able to provide the Court with a pretrial schedule inclusive of specific dates for each filing/exchange in an expeditious manner.

There are two issues on which the parties differ. First, Defendants submit that the Court should resolve a subset of the parties' disputes relating to jury instructions in advance of trial so that the jury will have the benefit of the legal framework needed to understand the factual issues that will be presented, including the definition of "beneficial ownership" under Danish law. To facilitate that the Defendants suggest that the parties present any preliminary instructional issues requiring resolution to the Court by motion not later than 30 days before trial.

Second, Defendants submit that the Court consider a staggered schedule for the submission of proposed final jury instructions whereby Plaintiff would file proposed jury instructions first, and Defendants would file their proposed jury instructions three weeks later.

For the Court's information, Elliot Peters of Keker, Van Nest & Peters LLP, counsel for defendant Michael Ben-Jacob, is unavailable for trial between October 15, 2024 and November 29, 2024 due to trial in *CoStar Group, Inc. et al v. Commercial Real Estate Exchange Inc.*, 2:20-cv-08819-CBM-AS (C.D. Cal.). The Defendants have signaled the possibility of additional unavailability for trial in either late fall 2024 or early 2025 and will report any such unavailability to the Court not later than the March 28, 2024 hearing.

Respectfully submitted,

*Marc A. Weinstein*

Marc A. Weinstein

Cc: All counsel of record via ECF

**Joint Proposed Pre-Trial Schedule<sup>1</sup>**

<b>Filing/Issue</b>	<b>Proposed Schedule</b>
<b>Summary Judgment</b>	
Defendants file motions for summary judgment based on statute of limitations issues in <i>SKAT v. van Merkensteijn et al.</i> , No. 1:19-cv-10713 (S.D.N.Y. 2019) and <i>SKAT v. Ben-Jacob</i> , No. 1:21-cv-05339 (S.D.N.Y. 2021).	May 10, 2024
Opposition	May 31, 2024
Reply	June 14, 2024
<b>Motion to Sever<sup>2</sup></b>	
Defendants file motion to sever case against defendant Michael Ben-Jacob	June 21, 2024
Opposition	July 12, 2024
Reply	July 26, 2024
<b>Preliminary Pretrial Disclosures</b>	
Parties exchange lists of any non-rebuttal expert witnesses to be called at trial	May 15, 2024
Parties exchange lists of any rebuttal expert witnesses to be called at trial	May 24, 2024
Parties serve notification of intent to assert the application of any non-New York law to any trial issues	May 31, 2024
Parties serve notification of any dispute on choice of law based upon notifications served on May 31	June 14, 2024
<b>Daubert Motions</b>	
Parties file <i>Daubert</i> motions	130 days before trial
Oppositions	4 weeks later
Replies	3 weeks later
<b>Motions <i>In Limine</i></b>	
Parties file motions <i>in limine</i>	6 weeks before trial
Oppositions	3 weeks before trial
No replies	
<b>Proposed Jury Instructions/Choice of Law Briefs [Plaintiff's Proposal]</b>	
Parties file proposed jury instructions, any foreign law declarations in support, and any briefs on choice of law issues	12 weeks before trial
Oppositions	8 weeks before trial

<sup>1</sup> The parties recognize that depending on when the trial date is set, certain deadlines keyed off of the trial date may need to be adjusted because of calendar conflicts (e.g., holidays) or other issues. The parties expect to be able to resolve any such issues and provide the Court with a pretrial schedule inclusive of specific dates in an expeditious manner.

<sup>2</sup> Defendants recognize that the Court may have already considered this issue in the context of the briefing submitted on the case schedule and trial plan, but Defendants want to make clear that we object and believe proceeding without severing Michael Ben-Jacob will prejudice all Defendants.

<b>Proposed Jury Instructions/Choice of Law Briefs [Defendants' Proposal]</b>	
Plaintiff files proposed jury instructions, any foreign law declarations in support, and any brief on choice of law issues	12 weeks before trial
Defendants file proposed jury instructions, any foreign law declarations in support, and any brief on choice of law issues, and objections to Plaintiff's proposed jury instructions	9 weeks before trial
Plaintiff to file objections to Defendants' proposed jury instructions	6 weeks before trial
<b>Pretrial Order and Related Modules</b>	
Plaintiff to provide to Defendants: <ul style="list-style-type: none"> <li>• General provisions governing conduct of trial</li> <li>• Brief statement of the case</li> <li>• Proposed fact stipulations</li> <li>• Deposition designations</li> <li>• Exhibit list</li> <li>• Witness list</li> <li>• Proposed verdict form</li> </ul>	11 weeks before trial
Defendants to provide to Plaintiff: <ul style="list-style-type: none"> <li>• Proposed revisions to general provisions governing conduct of trial</li> <li>• Objections to/revisions to brief statement of case</li> <li>• Objections to/revisions to fact stipulations</li> <li>• Deposition designations</li> <li>• Objections to Plaintiff's deposition designations</li> <li>• Deposition counter designations</li> <li>• Exhibit list</li> <li>• Objections to Plaintiff's exhibits</li> <li>• Objections to Plaintiff's witnesses</li> <li>• Objections to/revisions to verdict form (including submission of alternative form)</li> </ul>	9 weeks before trial
Plaintiff to provide to Defendants: <ul style="list-style-type: none"> <li>• Further revisions to statement of case, factual stipulations, exhibit list, witness list, jury instructions, verdict form</li> <li>• Objections to deposition designations</li> <li>• Deposition counter designations</li> <li>• Objections to Defendants' exhibits</li> <li>• Objections to Defendants' witnesses</li> <li>• Objections to Defendants' jury instructions</li> <li>• Objections to Defendants' verdict form</li> </ul>	7 weeks before trial
Parties file proposed <i>voir dire</i>	6 weeks before trial
Plaintiff files finalized Pretrial Order with the Court	5 weeks before trial
Defendants' proposed date for parties to file motions regarding unresolved preliminary jury instruction issues	[30 days before trial]
Parties file objections to proposed <i>voir dire</i>	4 weeks before trial